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Pension Scheme Wind-Ups

The Practical Considerations

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What Triggers a Wind-Up?

- Trust Deed - What does it say?
- Main circumstances
 - Employer will not / fails to pay
 - Employer cannot pay
 - Employer gives notice of cessation





Considerations

- What does Trust Deed say?
- Is wind-up necessary
- Employer notice required?
- Surplus or Deficit?





Trustee could decide to maintain scheme if interests of members best served.

Could Employer afford reduced benefits using Section 50?





Surplus?

- What does Trust Deed say?
- How is “surplus “ defined?
 - MFS?
 - Cost of guaranteed benefits?
- How is “surplus “ distributed?





Deficit?

- What does Trust Deed say?
- How is “Deficit “ defined?
 - MFS?
 - Other?
- Can you / Should you issue a Contribution Demand?





Contribution Demand

- Employer still in business?
- Administration, Receivership or Insolvency
- Chances of success?
- A negotiation ploy?
- Independent Auditors report?





Priority Rules

- Will they change?
- Should you wait?
- Could pensioners sue if deliberate delay?
- Could actives/deferreds sue if you don't?





Sovereign Annuities

- If used Trustees must show they acted honestly and reasonably
- Must strive for fairness to ALL members – not just pensioners





Sovereign Annuities

- MFS disadvantageous to Actives and Deferreds
- Use Sovereign Annuities to restore some balance?

(I don't think so!!)





- My view;

If fund in deficit:

Use SAs up to a max of what will restore MFS to actives and deferreds.

Cannot see rational case for partial use of SAs unless above achieved.





Other Issues

- Where use of SAs agreed:

Can pensioners be offered alternative of reduced guaranteed annuities?





Other Issues

- Trustee Indemnity
 - Is there an issue?
 - If Employer wound up can assets be used to buy some insurance?





Other Issues

- Outstanding Contributions?
- Claim under:
 - Companies (Amendment) Act 1982?
 - Protection of Employees (Employers Insolvency) Act 1984?





Other Issues

- Watch disclosure regulations
- Best practice – keep members informed at all stages

